

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and

THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 3893 of 2005

Between:

M/s. Das Mini Colour Lab, Governerpet, Vijayawada-2,
rep. by its Manager, D.S.Satyanarayana,

..... PETITIONER

AND

The Deputy Commissioner(C.T), No. II Division, Vijayawada.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ of mandamus or any other appropriate writ or order or direction declaring the action of respondent as arbitrary, illegal, without jurisdiction and contrary to Section 20 (2-A) of the A.P.G.S.T. Act and consequently set aside the notice dt. 03.12.2004 issued by the respondent and to pass to such other order or orders.

Counsel for the Petitioner:MR.P.GIRISH KUMAR

Counsel for the Respondent .: GP FOR COMMERCIAL TAX

The Court made the following :

O R D E R (Per TCSR,J)

Petitioner seeks a writ of Mandamus against the show cause notice dated 3.12.2004 issued by the respondent on the premise that the proposal of the respondent to revise orders passed by the assessing authority by taking up suo motu revision is barred under Section 20 (2-A) of A.P.G.S.T. Act, inasmuch as in similar circumstances in another case the Appellate Tribunal has already decided the matter against the Revenue.

2 . Petitioner is a registered dealer dealing in photo printing and developing. For the assessment year 2002-2003, the assessing authority passed final assessment order dated 6.8.2004 granting exemption on the total turnover relating to photo printing and developing charges, in view of the judgment of the Apex Court in RAINBOW COLOUR LAB AND ANOTHER v s . STATE OF MAHDYRA PRADESH AND OTHERS. As against the said order the respondent sought to take up the suo motu revision on the premise that the judgment of the Apex Court in Rainbow Colour's case (1 supra) was reversed in another judgment of the Apex court.

3 . As aforesaid, petitioner is now seeking to assail the show cause

notice in the instant writ petition. In the process, the petitioner seeks to rely upon the order dated 26.10.2004 passed by the Sales Tax Appellate Tribunal in M/s Sagar Colour Lab VS. The State of A.P.

4 . The contention of the learned counsel for the petitioner is that Section 20(2-A) specifically bars the revision petition, when the issue involved in the revision petition becomes the subject matter of an appeal or has been decided by an Appellate Tribunal under Section 21 of the A.P.G.S.T. Act ; and apart from that the Appellate Tribunal has already held that the judgment of the Apex Court in Rainbow Colour's case (1 supra) in fact has not been reversed by the Apex Court in its later judgment and that the earlier judgment bars the present revision.

5. The learned Standing Counsel for Commercial Taxes on the other hand represents that the order of the Tribunal dated 26.10.2004 being sought to be relied on by the petitioner is not in its case and that the said order is the subject matter of revision before this Court in T.R.C.No.6/2004 and since the same is pending adjudication, it has not become final. It is the contention of the learned Standing Counsel that the matter, which has not become final, will not bar the revisional jurisdiction of the respondent under Section 20(2-A).

6. We find sufficient force in the contention of the learned standing counsel for Commercial Taxes. It cannot be gainsaid that the order of the Tribunal dated 26.10.2004 is the subject matter of revision before this Court and the same is pending adjudication. For the said reason, the petitioner cannot take shelter under Section 20(2-A) of the Act and contend before this Court that the revision itself is without jurisdiction.

7. It may be mentioned herein that the petitioner approached this court invoking its extraordinary jurisdiction as against a show cause notice issued by the respondent. It is still open for the petitioner to appear before the authority and file its objections and invite an order. In that view of the matter, the contention of the learned counsel for the petitioner that there can be no end and finality shall have to be arrived at basing on the order passed by the Appellate Tribunal and the parties cannot be asked to wait till the matter attains finality before the highest forum in the hierarchy, cannot be accepted, for the simple reason that the revision preferred against the said order dated 26.10.2004 is pending adjudication before this court.

8. It is not a case where show cause notice has been issued by the respondent without any jurisdiction.

9. The learned Standing Counsel for Commercial Taxes represents that the Apex Court in ASSOCIATED CEMENT COMPANIES LTD. Vs. COMMISSIONER CUSTOMS in categorical terms, reversed the earlier judgment.

10. Anyway, as observed herein above, it is still open to the petitioner to file appropriate objections to the impugned show cause notice and invite an order.

11. We make it clear that the respondent, after the petitioner files its objections, shall deal with the same in accordance with law by passing appropriate orders therein, without being prejudiced by any observations made inter alia in this order.

12. For the foregoing reasons, we dismiss the writ petition at the threshold. No costs.

M.H.S.ANSARI,J

T.CH.SURYA RAO,J

AVS

DATE:09.03.3005

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To.

1. The Deputy Commissioner(C.T), No. II Division, Vijayawada.
2. 2 CCs to G.P. For Commercial Taxes, High Court of A.P. Buildings, Hyderabad. (OUT).
3. 2 CD copies.

